

REMARKS

1. Summary of the office action

In the office action mailed December 19, 2008, (i) the Examiner rejected claim 50 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention; (ii) the Examiner rejected claims 1-3, 5, 7, 8, 11-15, 17-23, 38, 49-51, 55, 56, 59-63 and 66-79 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0083439 (Eldering) in view of U.S. Patent No. 5,948,061 (Merriman), and (iii) the Examiner rejected claims 31, 39, and 52 under 35 U.S.C. § 103(a) as being unpatentable over Eldering in view of Merriman and U.S. Patent No. 7,017,173 (Armstrong).

2. Amendments and pending claims

Applicant has amended claims 1, 38, 80, and 81, cancelled claims 22, 40, 41, 49-56, 59, 60, 66, 67, 76, 77, 82, and 83, and added new claims 84-89. Claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89 are pending. Of the pending claims, claims 1 and 38 are independent.

3. Interview Summary

On March 10, 2008, the undersigned faxed to Examiner Jeffrey Carlson an Applicant Initiated Interview Request Form, and a list of claims. The list of claims, submitted for purposes of discussion only, included an amended version of pending claim 1, and claims identified as 84 and 85. On March 11, 2009, the undersigned held a telephone interview with Examiner Jeffrey Carlson.

During the interview, we discussed Eldering and Merriman and the list of claims. The Examiner stated that Eldering's DVR determines a queue order and is smart enough to use rules from a server. The undersigned noted that Merriman's satisfaction index (SI) algorithm to determine an advertisement to be sent to a user's browser is used in an advertising server process, not a client-side machine. The Examiner stated that it would have been obvious to put Merriman's satisfaction index (SI) algorithm into the Eldering's DVR. No agreement regarding placement of the satisfaction index (SI) algorithm was reached.

The undersigned then noted that Eldering does not disclose or suggest that the advertisement metadata delivered by a service provider includes a weight value parameter. The Examiner stated that a server would provide Eldering's DVR with 2 of the 4 parameters used to determine the satisfaction index (SI), namely "N" and "end-start." No agreement regarding the content of the advertisement metadata was reached.

No agreement regarding the claims recited in the list of claims was reached.

4. Response to claim rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejected claim 50 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has cancelled claim 50.

5. Response to claim rejections under 35 U.S.C. § 103(a)

The Examiner rejected independent claims 1 and 38 under 35 U.S.C. § 103 (a) as being unpatentable over Eldering and Merriman. Applicant submits that Eldering and Merriman do not reasonably lead to each and every element recited in claims 1 and 38, as amended.

At a minimum, Eldering and Merriman do not reasonably lead to the client (or the client-side machine) determining the respective weight value for each ad that is associated with a respective weight value, *wherein the client uses a weight rule contained in the ad control file associated with the ad so as to determine the weight value associated with the ad, and wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed*, as now recited in claims 1 and 38.

In rejecting claims 1 and 38, the Examiner stated that Eldering does not appear to teach a weighted placement value for ads derived by a product of a re-determined placement value and the ads weight value. To make up for this deficiency of Eldering, the Examiner stated that Merriman teaches (i) methods for selecting suitable ads targeted to a viewing user's profile, (ii) using a *satisfaction index* for the ads of an advertising campaign that acts as weighted placement value, (iii) the index (weighted placement value) is derived for each ad using a product of ratios representing the (continually re-determined) percentage of desired ad quantity impressions and the percentage of elapsed campaign duration, and (iv) any of the 4 specified values (or certain combinations of them) of [the satisfaction index] can be taken to represent the claimed "weight value" and "re-determined placement value."

According to Merriman, the formula for the satisfaction index (SI)

is:
$$SI = \frac{n}{N} * \frac{\text{end} - \text{start}}{\text{now} - \text{start}}$$
, where "n" equals the number of times a particular advertisement has been viewed by anyone, "N" is the number of times the advertisement is to be seen by anyone, "end-start" is the total number of days that the advertisement is

scheduled to run, and “now-start” is the number of days that the advertisement has run to date. *See*, Merriman, col. 6, lines 31-47.

Claims 1 and 38 provide for a client (or client-side machine) receiving a plurality of ad control files from a remote server. Therefore, even if it is assumed, for the sake of argument, that Eldering’s PVR determines Merriman’s satisfaction index (SI) and that Merriman’s advertising server process 19 provides Eldering’s PVR with the values “n”, “N”, “end-start”, and “now-start”, Applicant submits that the combination of Eldering and Merriman do not disclose or suggest the client determining the respective weight value for each ad that is associated with a respective weight value, *wherein the client uses a weight rule contained in the ad control file associated with the ad so as to determine the weight value associated with the ad, and wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed.*

Applicant further submits that none of the values “n”, “N”, “end-start”, and “now-start” of Merriman amount to *an equation* for calculating a weight value that increases proportionately to time passed.

Because Eldering and Merriman do not reasonably lead to each and every element recited in independent claims 1 and 38, Applicant submits that claims 1 and 38 are allowable. Further, without conceding the assertions made by the Examiner regarding dependent claims 2, 3, 5, 7, 8, 11-15, 17-21, 23, 31, 39, 61-63, 68-75, and 78-81, Applicant submits that dependent claims 2, 3, 5, 7, 8, 11-15, 17-21, 23, 31, 39, 61-63, 68-75, and 78-81 are allowable for at least the reason that they depend from one of allowable claims 1 and 38.

6. New claims

Applicant has added new claims 84-89. Applicant submits that new claims 84-89 are allowable for at least the reason that they depend from one of allowable claims 1 and 38.

7. Conclusion

Applicant believes that all of the pending claims have been addressed in this response. However, failure to address a specific rejection or assertion made by the Examiner does not signify that Applicant agrees with or concedes that rejection or assertion.

For the foregoing reasons, Applicant submits that claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89 are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims.

Respectfully submitted,

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